TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940 1941

No. 686

GEORGE C. REITZ, APPELLANT,

vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK

FILED JANUARY 8, 1941.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1941.

[fol. 1]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

GEORGE C. REITZ, Plaintiff

vs.

CARROLL E. MEALEY, as Commissioner of Motor Vehicles of the State of New York, Defendant

COMPLAINT—Filed Oct. 26, 1940

Plaintiff complaining of the defendant respectfully alleges:

First. That plaintiff is a resident of the City and County of Albany and State of New York and a citizen of the United States.

Second. That on June 21, 1940, the plaintiff was duly adjudicated a bankrupt and his proceeding in bankruptcy was duly referred, and that the question of plaintiff's discharge has not yet been determined and the time therefor has not yet elapsed.

Third. That among plaintiff's debts scheduled therein under Schedule A-3 is a Judgment recovered against the plaintiff herein in the Supreme Court, Albany County, in favor of Anson Shafer in the sum of Five Thousand One Hundred Thirty Eight Dollars and Twenty Five Cents ($5138.25) resulting from a negligence action to recover damages for personal injuries arising out of the operation of an automobile by the plaintiff herein; and that the Complaint of the plaintiff, Anson Shafer, in said action did not allege that the defendant in such action, George C. Reitz, (plaintiff herein), caused said injuries by any wilful or malicious act on the part of the defendant therein (the plaintiff herein); and that said Complaint was not amended upon the trial of said action or at any other time to allege wilfulness or maliciousness on the part of the defendant therein (the plaintiff herein).

Fourth. That said Judgment was duly docketed in the Albany County Clerk's Office on December 15, 1939, and a copy of said Judgment with notice of entry thereof, was served upon the attorney for the plaintiff herein on Decem-

[fol. 2] ber 15, 1939, and a copy of said Judgment is annexed to and made a part of this Complaint.

Fifth. That at the time of the filing of the Schedules in Bankruptcy of the plaintiff herein this Judgment remained unsatisfied and the judgment creditor had issued a Property Execution against the property of the plaintiff, which Execution was duly returned unsatisfied by the Sheriff of the County of Albany, and the said judgment creditor had caused a Garnishee Execution against the wages of the plaintiff herein to be filed by the Sheriff of Albany County with plaintiff's employer, Callanan Road Improvement Company, at South Bethlehem, Albany County, New York.

Sixth. That the claim of the judgment creditor, Anson Shafer, and the Judgment obtained pursuant to said claim are dischargeable in bankruptcy.

Seventh. That prior to May 29, 1940, pursuant to a demand by John J. Scully, attorney for said judgment creditor, under the provisions of Sec. 94b. of the Vehicle & Traffic Law of the State of New York, the Clerk of the Supreme Court, Albany County, forwarded a Transcript of said Judgment, a copy of which is hereto annexed and made a part of this Complaint, to the Commissioner of Motor Vehicles of the State of New York, Carroll E. Mealey, with evidence by Affidavit of the said John J. Scully that said Judgment had remained unsatisfied for more than fifteen (15) days after the same had become final, all in due compliance with Sec. 94b. of the Vehicle & Traffic Law of the State of New York; that by authority of Sec. 94b. of the Vehicle & Traffic Law of the State of New York, Carroll E. Mealey, the Commissioner of Motor Vehicles of the State of New York, issued an Order, a copy of which is hereto annexed and made a part of this Complaint, suspending plaintiff's chauffeur's license until the Judgment hereinbefore mentioned is satisfied or discharged.

[fol. 3] Eighth. That said Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional and void as it is in violation of the Constitution of the United States and invades the field of bankruptcy, which by the United States Constitution is a power exclusively delegated to the Federal Government, in that said section, solely at the instigation of the judgment creditor, and not otherwise,

mandatorily requires the Commissioner of Motor Vehicles of the State of New York to suspend the plaintiff's license for a term of three (3) years, but permits the judgment creditor to consent to the restoration of such license immediately and from time to time, with the consent of the judgment creditor, and, therefore, upon terms solely within his control, and that the said section in effect is a means given to the judgment creditor to collect a Judgment dischargeable in bankruptcy; and that said Sec. 94b. violates the Fifth and Fourteenth Amendments to the Constitution of the United States.

Ninth. That if such Order of Suspension is allowed to remain in full force and effect irreparable damage will be done to the plaintiff since the use of his chauffeur's license in his employment is necessary and the plaintiff cannot retain his present employment, the only type of work for which he is fitted, without said license.

Tenth. That plaintiff has not yet surrendered his chauffeur's license to the Commissioner of Motor Vehicles.

Eleventh. That all proceedings on the part of the Commissioner of Motor Vehicles to enforce the suspension of plaintiff's chauffeur's license have been enjoined pending the disposition of this action.

Wherefore, plaintiff demands judgment that the aforesaid Sec. 94b. of the Vehicle & Traffic Law of the State of New York is in violation of the Constitution and Laws of the United States, is void and unconstitutional; and plaintiff [fol. 4] farther asks that the Commissioner of Motor Vehicles of the State of New York, Carroll E. Mealey, be temporarily and permanently restrained from enforcing such suspension of plaintiff's chauffeur's license and be mandatorily enjoined to withdraw his Order and Notice of Suspension of plaintiff's chauffeur's license; and that plaintiff have judgment that plaintiff's chauffeur's license cannot be suspended by the Commissioner of Motor Vehicles under Sec. 94b. of the Vehicle & Traffic Law of the State of New York; and for such other and further relief as to the Court seems just and proper, together with the costs of this action.

Harry A. Allan, Attorney for Plaintiff, Office & Post Office Address, 90 State Street, Albany, N. Y.

[fol. 5] In Supreme Court of New York, Albany County

Anson Shafer, Plaintiff

against

George Reitz, Defendant

Judgment

The issues in the above entitled action having been duly tried before Hon. William H. Murray, Justice of the Supreme Court, and a jury, at a term of this court held in and for the county of Albany at the County Court House in the city of Albany, New York, on the 6th day of December, 1939, and the jury having rendered its verdict in favor of the plaintiff and against the defendant in the sum of Five Thousand dollars ($5,000.00), and the costs of the plaintiff having been duly taxed in the sum of One hundred thirty-eight and 25/100 dollars ($138.25),

Now, on motion of John J. Scully, attorney for plaintiff, it is

Adjudged that the plaintiff recover of the defendant the sum of Five thousand dollars ($5,000.00) plus the sum of One hundred thirty-eight and 25/100 dollars ($138.25), costs as taxed, making in all the sum of Five thousand one hundred thirty-eight and 25/100 dollars ($5,138.25), and that the plaintiff have execution therefor.

Dated, December 15, 1939.

John A. Knox, Clerk.

[fol. 6] No. 940 Judgment Debtor In Favor of

Reitz, George
Ravena, N. Y.

Shafer, Anson
Selkirk, N. Y.

	Amount		Judgment Obtained	Docketed	Court	Attorneys	Execution
	Dollars	Cents					
Damages,	$5,000	00	Dec. 15	Dec. 15,	Supreme	John J. Scully	
Costs,	138	25	1939	1939	Roll Filed,	51 State St.	
Total,	$5,138	25		11:43 A.M.	Albany Co.	Albany, N. Y.	

Supreme Court,)
Albany County Clerk's Office)

I, John A. Knox, Clerk of Albany County, and Clerk of the Supreme and County Courts, do hereby certify that the foregoing is a correct transcript from the docket of Judgments kept in said Clerk's Office.

Witness my hand and official seal this 16th day of May 1940.

John A. Knox, Clerk.

(Here follow 2 photolithographs, side folios 7-7½)

M.V. 110-I. 11-8-37 5000 sets (3n 3020)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUREAU OF MOTOR VEHICLES

ORDER OF SUSPENSION OR REVOCATION OF LICENSE OR CERTIFICATE OF REGISTRATION

Order No. 418088

Dated May 29, 1940

Chauffeur's License No. 9306770

Certificate of Registration No. All 1940 regs.

Operator's License No. for current period

in the name of the person given below is hereby suspended until the judgment is satisfied or discharged and proof of Financial Responsibility is submitted.

IT IS ORDERED that the License ~~XX~~ and Certificate of Registration and Number Plates **BE SURRENDERED IMMEDIATELY UPON RECEIPT OF THIS ORDER** to the Commissioner of Motor Vehicles at his office at State Office Bldg., Albany, N.Y. (District Office - 1st floor)

CAUSE: Failure to satisfy final judgment of a Court, in compliance with Section 94-B of the Vehicle and Traffic Law. Judgment in favor of Anson Shafer. FINANCIAL RESPONSIBILITY REQUIRED

418088

George Reitz
Ravena, N. Y.
(Albany County)

CHARLES A. HARNETT,
~~XXXXXXXXXXXXXXXX~~
Commissioner of Motor Vehicles

by Carroll E. Mealey
CARROLL E. MEALEY,
Deputy Commissioner
~~XXXXX~~

R&D:H

7

(SEE OTHER SIDE)

(COPY TO LICENSEE OR REGISTRANT)

VEHICLE AND TRAFFIC LAW

ARTICLES 3 AND 5

1. *Failure of the holder* or any other person possessing the license card, registration certificate, or number plates, *to deliver* the same as herein ordered is a misdemeanor. (Section 71.)

2. Any operator or chauffeur operating a motor vehicle or motorcycle while his license is suspended or revoked shall be guilty of a misdemeanor. (Section 70, Subdivision 6.)

This order was made in pursuance of a record received in the Bureau of Motor Vehicles. If the person affected thereby claims an error has been made, this fact, with statement of reasons and certified court transcript, should be filed immediately with the Commissioner of Motor Vehicles.

7½

[fol. 8] *Duly sworn to by George C. Reitz. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 9] In United States District Court, Northern District of New York

[Title omitted]

Answer—Filed October 26, 1940

The defendant above named, by John J. Bennett, Jr., Attorney General of the State of New York, answering the complaint herein:

1. Admits the allegations contained in the paragraphs of said complaint numbered "First" "Second", "Third", "Fourth", "Seventh", "Tenth", and "Eleventh".

2. Admits the allegation contained in paragraph numbered "Fifth" of said complaint "That at the time of the filing of the schedules in bankruptcy of the plaintiff herein this judgment remained unsatisfied," but denies having knowledge or information sufficient to form a belief as to every other allegation in said paragraph contained.

3. Denies the allegations contained in the paragraphs of said complaint numbered "Sixth" and "Eighth".

4. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of said complaint numbered "Ninth".

Wherefore, the defendant demands judgment that the [fol. 10] complaint herein be dismissed, with costs and disbursements of this action.

John J. Bennett, Jr., Attorney General, State of New York, Office and Post Office Address, The Capitol, Albany, N. Y.

[fol. 11] *Duly sworn to by Leon Aronowitz. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 12] In United States District Court for the Northern District of New York

[Title omitted]

Opinion—Filed August 10, 1940

Before L. Hand, Circuit Judge, Cooper and Coxe, District Judges

On motion for an injunction, restraining the Commissioner of Motor Vehicles of the State of New York from suspending the "chauffeur's" license of the bankrupt.

Harry A. Allan for the plaintiff.

Jack Goodman for the defendant.

L. Hand, C. J.:

This is a motion made in an action brought to enjoin the Commissioner of Public Vehicles of New York from suspending the plaintiff's driver's license as a chauffeur. The plaintiff is a bankrupt, duly adjudicated on June 21, 1940, but his discharge has not been granted, nor does it appear that the referee has fixed any time under Sec. 12 of the Bankruptcy Act within which creditors must file their specifications of objection. The defendant has filed an answer, admitting all the essential facts upon which the suspension of a driver's license depends under Sec. 94 (a) of the Vehicle & Traffic Law of New York. These are that judgment shall be recovered against the licensee for damages for injuries to person or property, resulting from the operation of a motor-car, that he shall not pay the judgment within fifteen days, that the judgment creditor shall in writing ask the clerk of the court where the judgment is entered to forward a certified copy of it to the commissioner of public vehicles, and that the clerk shall do so. The section then directs the commissioner to suspend the driver's [fol. 13] license for three years unless he pays the judgment meanwhile, and even if he does, not to restore it within that time, or thereafter, unless he gives the security, required by Sec. 94 (c) of the act, to protect any whom he may injure in the future. The legislature added a proviso in 1936 that upon consent in writing of the creditor the commissioner might restore the license in any case for six months, and for as much longer thereafter as the creditor's

consent remains outstanding; but again only in case the debtor gives the security required by Sec. 94 (c). (Laws 1936, c. 448.) The general plan of the section is apparent. Although no compulsory insurance is made a condition upon granting them, all licenses are issued subject to two conditions: first, that after one accident in which the judgment of a court has found the licensee at fault, his license will be permanently cancelled unless he takes out insurance; and second, that in any event it will be suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration.

It would have been more regular to proceed by petition in the bankruptcy proceeding, as this "action" is strictly a "controversy" in bankruptcy, ancillary to the main proceeding; but, since the difference is only one of form, we will disregard it. We have already held in Healey v. Murnaghan, 34 Fed. Suppl. —, that we have jurisdiction under Sec. 11 to enjoin the commissioner; and that, after the clerk has remitted the judgment to him, it is necessary to call together a court of three judges under Sec. 380 of Title 28, U. S. Code. The question is therefore now inescapably presented whether the section is constitutional.

The bankrupt attacks it upon two grounds; first, that it violates the Fourteenth Amendment; and second, that by impairing the effect of a discharge it conflicts with Sec. 17 of the Bankruptcy Act. The first point presents little difficulty. There could be no possible complaint, if the [fol. 14] legislature, instead of requiring all drivers to take out insurance, had required only those to do so, who had been once found guilty of careless driving. The only question that can be raised is whether it contradicts that purpose to add the second condition; i. e. that the license will be suspended for three years unless the licensee pays the judgment. That was the form of the section before 1936, and that we shall consider first. The effect of this was to make the license security for any damage done through the licensee's carelessness, and that was well calculated to increase his care. Indeed—though long use has accustomed us to its acceptance—perhaps insurance against liability for personal fault without some attendant means of enforcing care (such as exists, for example, in the case of marine insurance) always serves somewhat to dampen caution; at least reasonable people might think so, and for that reason a legislature might forbid any insurance whatever against the first few thousand dollars of liability for negligent

driving so that drivers should have a pecuniary incentive to avoid collision. This section before 1936 had in substance such a result, and for that reason it did not conflict with the Fourteenth Amendment. So a "statutory court" held in Munz v. Harnett, 6 Fed. Suppl. 158, and there have been several other decisions elsewhere, upholding similar statutes. Watson v. State Division of Motor Vehicles, 212 Cal. 279; Opinion of the Justices, 251 Mass. 617; Garford Trucking, Inc. v. Hoffman, 114 N. J. L. 522; Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200; State v. Price, 49 Ariz. 19; Nulter v. State Road Comm., 119 W. Va. 312.

The argument that the section conflicts with Sec. 17 of the Bankruptcy Act is more plausible. It seems to us at least very doubtful whether, as was said in Munz v. Harnett, supra (6 Fed. Suppl. 158) it is here relevant that a discharge does not extinguish the debt, but merely tolls the remedy. Whether the section can be justified or not, certainly power to suspend the driver's license is in effect a means of collecting the debt; it takes away his livelihood until he pays, and its imposition lies in the creditor's hands. The fact that the section adds the sanction that the driver, [fol. 15] once found negligent, must in any event give security for the future, does not obliterate this; each condition is independent of the other. Therefore, if Sec. 17 must be read as relieving bankrupts of all sanctions for the collection of dischargeable debts, no matter what other public purpose they may serve, the section is invalid, for the Bankruptcy Act is paramount. We do not think that the section so much impedes the states in their polity. Inability to pay one's debts is not irrelevant in determining one's fitness for many kinds of activity. In In Re Hicks, 133 Fed. Rep. 739, for example, a city ordinance had provided that no one should be a municipal fireman who did not pay his debts, and the court held the ordinance invalid because it conflicted with the Bankruptcy Act. The ruling seems to us plainly wrong; the city might have good reasons for excluding from a position so vital to its welfare men who were so irresponsible that they would not live within the salaries given them. The fact that in doing so, the ordinance necessarily acted as a sanction for the collection of the debts was not material; the city was still entitled to make its own standards for admission to its fire department. The same reasoning applies here. Drivers of motor-cars are a selected class, and of these those who suffer judg-

ments for faulty driving are presumably less likely to be safe drivers than the average. Out of this number to discipline only those who cannot pay judgments against them, might rationally be a further step in the same direction, for it is not unreasonable to say that among careless drivers, those are apt to be more careless who have no financial interest at stake. It is enough if the standard chosen works well on a whole; legislation is inevitably a more or less rough process, and need aim at no more than average success.

We have hitherto considered the section as it stood in 1936 before the amendment which gave the creditor power to consent to the restoration of the license, and before he alone could set the machinery in motion. The plaintiff [fol. 16] argues that after these amendments at any rate, if not before, the section became only a remedy for the collection of debts. As to the amendment of 1936 he says that, even if it helped to insure safe driving to make the driver's license security for any judgment against him, it did not further that policy to give the creditor power to restore it; for it would be absurd to say that out of those drivers who have been found both negligent and financially irresponsible, those alone should be disciplined who could not persuade their creditors to be lenient. Yet it is doubtful whether the amendment made any very substantial change. The original statute in fact gave the creditor power at any time to restore the license by a complete satisfaction of the judgment; and the amendment merely added to this by enabling him to withdraw his consent, once given, after six months. In any case, whether that change conflicted with Sec. 17, or could be reconciled with the original scheme, we need not decide for reasons that will appear.

The commissioner defends the amendment of 1939 by saying that it was a fair implementation of the purpose of the original section, because it merely relieved the clerk of an irksome duty. He had been obliged to find out whenever a judgment had remained unpaid for fifteen days, whether it was for damages due to negligent driving. Instead of this the amendment set up an automatic system depending upon the creditor's interest in starting the clerk into action. This distinction is, however, more apparent than real because under the section as it stood before 1939, the creditor had the same incentive and he was as likely as thereafter to advise the clerk of the judgment, after which the clerk

was bound to proceed. The only change was that after 1939 the clerk could not proceed sua sponte, and that the amendment did thereafter in theory allow the creditor to hold off the suspension. But again, not only could he have done that before 1939 by a satisfaction of the judgment, but the chance that the clerk would have acted without being prodded by the creditor must have been very remote. This amendment also really made very little change in substance. [fol. 17] However, we need not pass on the constitutionality of either of the amendments, for it is well settled in New York, as elsewhere, that a statute itself constitutional, is not affected by an unconstitutional amendment; the amendment is brutum fulmen and drops out as though never passed. People ex rel. Farrington v. Mensching, 187 N. Y. 8, 22, 23; Markland v. Scully, 203 N. Y. 158, 166; People v. Klinck Packing Company, 214 N. Y. 121, 140; Buffalo Gravel Corp. v. Moore, 201 App. Div. 242, 248, affirmed on other grounds, 234 N. Y. 542. This doctrine is really no more than an instance of another doctrine, which happens to be especially favored in New York, that a statute will survive the excission of unconstitutional parts, unless it is apparent that the legislature would not have enacted it with the invalid parts out of it. New York Central & H. R. R. R. v. Williams, 199 N. Y. 108, 116; People v. Beakes Dairy Co., 222 N. Y. 416, 431, 432; People ex rel. Alpha P. C. Co. v. Knapp, 230 N. Y. 48, 60; People v. Maneuso, 255 N. Y. 463, 474; Bronx G. & E. Co. v. Maltbie, 268 N. Y. 278, 292; Gaynor V. Marohn, 268 N. Y. 417, 430. In the case at bar the clerk did remit a certified copy of the judgment to the commissioner; and it makes no difference whether he did so upon the creditor's demand, or sua sponte. The creditor has made no attempt to restore the license, and may never do so; if he does, the commissioner will have to decide whether or not to comply with his demand. As things stand, we need decide therefore only upon the act as it was in 1936, and we agree with Manz v. Hartnett, supra (6 Fed. Suppl. 158) that it was valid. The temporary injunction will be vacated, and the complaint will be dismissed.

Reitz v. Mealey.

I concur.

Alfred Coxe, D. J.

[File endorsement omitted.]

[fol. 18] In United States District Court, Northern District of New York

[Title omitted]

Dissenting Opinion—Filed August 14, 1940

Cooper, J., dissenting:

The writer cannot concur with the majority opinion for the reasons appearing herein.

Section 94(b) as it was in 1933 was held a valid exercise of the State's police power in the case of Munz vs. Hartnett, 6 Fed. Supp. 158, Decided December 20, 1933.

As the Section then read it was the duty of the Commissioner of Motor Vehicles, upon receiving a certified copy of an unsatisfied judgment, to forthwith suspend the operator's or chauffe-r's license and all the registration certificates of any person "in the event of his failure within 15 days thereafter to satisfy every judgment—for damages on account of personal injury, including death, or damages to property in excess of $100.00, resulting from the operation of a motor vehicle by him or his agent, or any other person for whose negligence he shall be liable and responsible."

The section further provided that such license and registration certificate:—

"shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied and subsisting, until said judgment or judgments are satisfied or discharged, except by a discharge in bankruptcy, to the extent of or at least five thousand dollars for an injury to one person in one accident and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident, and until the said person gives proof of his ability to respond in damages as required in section 95-c of this chapter for future accidents."

[fol. 19] The section also provided as follows:—

"It shall be the duty of the clerk of the Court, or of the Court, where it has no clerk, in which such judgment is ren-

dered, to forward immediately after the expiration of said fifteen days as aforesaid, to such Commissioner, a certified copy of such judgment or a transcript thereof."

It will thus be seen that the provisions were mandatory for the permanent suspension of the operator's or chauffe-r's license and registrations until judgments are paid to the extent prescribed in the statute and the liability insurance furnished as provided in Section 94 (c).

Suspension of license automatically followed failure within fifteen days to pay the judgment to the extent prescribed to give liability insurance against future accidents.

The negligent and defaulting driver or owner could never again have operator's or chauffe-r's license or registration certificate until he paid the judgment to the extent specified and gave the liability insurance required (by section 94-c) as proof of his ability to respond in damages fo*r* future accidents.

By 1936 the period of suspension because of non-payment of the judgment specified was reduced to three years, but the same proof of ability to respond in damages fo*r* future accidents by furnishing liability insurance was required.

In 1936 the statute was further amended to read as follows:—

"Provided, however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the Commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter."

In 1939, Section 94-b was re-enacted, including the above amendment of 1936 and by inserting in the section the words in italics in the quotation from the section.

"It shall be the duty of the clerk to forward immediately —*upon written demand of the judgment creditor or his attorney* a certified copy of such judgment or a transcript thereof."

This insertion is a direction to the Clerk to forward a copy of the judgment to the Commissioner of Motor Vehicles [fol. 20] upon written demand and not otherwise. This means that without such demand the clerk has no duty.

It is thus clear that since the 1939 re-enactment of Section 94-b, nothing happens to the judgment debtor unless the judgment creditor wills it so. Except for such action by the judgment creditor, the debtor may apparently drive for the rest of his life without paying the judgment and without obtaining any liability insurance.

On the other hand, action by the judgment creditor will prevent the judgment debtor driving for a single day unless the latter comes to terms with the creditor.

The creditor has but to make written demand on the clerk and the latter must forward "immediately" to the commissioner and the commissioner must thereupon suspend the debtor's license.

The provision inserted in the statute in 1936 and now a part thereof, that if the judgment creditor consents in writing license "may be allowed" by the Commissioner for six months and thereafter until such consent is revoked in writing, is mandatory in legal effect in the absence of any provision that license may be allowed "within the discretion of the commissioner" or "with the approval of the commissioner."

"May" must be construed as "shall" when the contest or subject matter require such construction.

Supervisors vs. U. S., 4 Wall 435.

In U. S. vs. Thoman, 156 U. S. 353, 359, it is said:—

"It is a familiar doctrine that when a statute confers a power to be exercised for the benefit of the public or of a private person, the word "may" is often treated as imposing a duty rather than conferring a discretion.

Mason vs. Pearson, 9 How. 248.
Washington vs. Pratt, 8 Wheat 681.
Supervisors vs. U. S., 4 Wall. 435."

In People Ex Rel. Doscher vs. Sisson, 222 N. Y. 387, 395, it was held:—

[fol. 21] "The authorization created by the word "may" was mandatory and not permissive. It is a general though not inflexible rule that permissive words used in the statutes conferring powers and authority upon officers or bodies will be held mandatory when the act authorized to be done concerns the public interest or the rights of individuals." (Citing cases.)

It will be seen that this section makes the Commissioner of motor vehicles a disguised collection agent for the judgment creditor. All public policy of protection for the public is eliminated. No longer must the non paying judgment debtor inescapably lose permanently, or for three years, his right to operate a motor vehicle, unless he pays the judgment to the extent defined in the section.

He now has the privilege to operate the motor vehicle without compliance with the statute as it was, but that privilege is within the sole control of the judgment creditor. He must bargain with the creditor for installment payments or other consideration satisfactory to the creditor.

If terms are not made, the judgment creditor makes written demand on the clerk of the Court and the latter is required to forward immediately to the Commissioner a certified copy of the judgment. The Commissioner must thereupon suspend the judgment debtor's license. Immediately upon the lat-er coming to terms with the judgment debtor, the judgment creditor by written consent requires the commissioner to revoke the suspension for six months. At the end of six months, if terms are not complied with, suspension again ensues. If terms are complied with no suspension takes place at all. This consent to operate may cover the whole three years period.

No public officer has any power to deny the judgment creditor's will, whoever that creditor may be. The statute makes it the duty of the Clerk of the Court and the Commissioner to carry out the judgment creditors will in suspending or not suspending the license. That the Clerk and the Commissioner will be compelled by mandamus to act as the judgment creditor demands is without doubt.

Jones vs. Harnett, 247 A Div. 7, Affirmed 271 N. Y. 626.

[fol. 22] It is quite true that the judgment debtor need not accept the demand which the judgment creditor may make as a condition of raising the three year ban, but accept he must or lose the right or privilege of operating an automobile on the public highway. If his occupation is that of driving an automobile or truck, as here, this means that his livelihood is in the sole control of the judgment creditor.

Under this statute all pretense of the exercise of the police power of the State for the protection of the public using the

highways by suspending the license for three years must be deemed to be abandoned.

The ultimate power of suspension is exclusively vested in the discretion of a private citizen.

Moreover, the private citizen may at some time be not a citizen at all but the worst felon out of prison, for his right to sue is not lost except in case of life imprisonment (Section 511 N. Y. Penal Law).

Statutes are to be construed by what is possible under them.

> People vs. Klinck Packing Company, 214 N. Y. 121, 139.

This statute is unique in delegating its enforcement to unknown private citizens in their discretion and for their own interest, and no case passong a like statute has been found. But authorities have been found analogous in principle.

An act attempting to delegate legislative power even to a public officer to be exercised in his discretion is invalid.

> People vs. Klinck Packing Company, 214 N. Y. 121, 138 Supra.

How much more invalid is the attempt to delegate such power to unknown and unknowable private citizens to be exercised in their discretion.

It is held in substance that the state police power can neither be abdicated nor bargained away and is inalienable even by express grant.

> Atlantic Coast Line Ry. vs. Goldsboro, 232 U. S. 548, 558.

The State may not surrender or bind itself not to exert its police power.

> Phillips Petroleum Company vs. Jenkins, 297 U. S. 629, 635, also
> [fol. 23] Chicago and A. R. R. Company vs. Traubarger, 238 U. S. 67, 77.

In Coppage vs. Kansas, 236 U. S. 1, it was held in substance that a statutory provision which is not a legitimate police regulation cannot be made such by being placed in

the same act with a police regulation or by being enacted under a title that declares a purpose which would be a proper object for the exercise of that power.

In Henning vs. Georgia, 163 U. S. 299, 304, it was held that where a state statute purporting to be enacted under the police power of the state has no real or substantial relation to the object sought, or is a palpable invasion of the rights secured by fundamental law, it is invalid.

In Gulf C. S. St. R. Railways vs. Ellis, 165 U. S. 150, it was decided that a statute which is merely to compel the payment of an indebtedness does not come within the scope of the police power.

It seems reasonably clear, therefore, that Section 94 b is not a valid exercise of the police power of the State.

By itself, the question of whether or not Section 94 b is a valid exercise of State Police Power might not present a Federal question and could not, therefore, be decided here if it were the sole question for decision. But where a federal question is presented, the Court has jurisdiction to decide the state questions.

In Greene vs. Louisville & I. Railway Company, 244 U. S. 899, the headnote says:—

"In cases in which the jurisdiction of the District Court is properly invoked upon a substantial controversy arising under the Constitution of the United States, the jurisdiction of that Court and of this Court on Appeal, extends to the determination of all questions involved, including questions of State Law, irrespective of the disposition that may be found of the Federal question and of whether it be found necessary to decide it at all."

See also Chi G. W. R. vs. Kendall, 266 U. S. 94.
L. & N. Railway vs. Garrett, 231 U. S. 298.

The Federal question here is whether or not section 94 b violates any provision of the Federal Constitution or of laws enacted under power delegated exclusively to the Federal Government.

The decision here might rest upon the invalidity of Sec- [fol. 24] tion 94-b as an exercise of State police power.

But the section also invades the field of bankruptcy delegated by the U. S. Constitution to the Federal sovereignty.

It is a transparent attempt by the State to provide a means by which the private citizen may, in violation of the

bankruptcy laws of the United States, collect his judgment in whole or in part from one and an unknown class of persons, viz, those licensed to operate a motor vehicle on those highways against whom a negligence judgment arising from the operation of such motor vehicle has been recovered and remains unpaid, which judgment is discharged under the bankruptcy laws or will be discharged.

The Statute expressly says that the license when suspended at the judgment creditors discretion:—

"shall remain so suspended—while any such judgment or judgments remain unstayed, unsatisfied and subsisting either until said judgment or judgments are satisfied or discharged *except by discharge in bankruptcy* to the extent * * *." etc.

In other words, it is an attempt on the part of the one state to withdraw from the Federal Government, for the benefit of a limited class of persons, a portion of the bankruptcy power delegated by the States to the Federal Government in the Constitution and thereby destroy the uniformity of the bankruptcy laws, so far as the State of New York is concerned. One of the functions of that Federal Power under the Constitution is to declare what judgments are dischargeable and to provide for their discharge.

When the bankrupt is discharged from his debts under the Federal Bankruptcy Law, no state has power to make any sanctions or procedure by which a discharged judgment may nevertheless be collected under whatever guise that sanction or procedure may be dressed.

When a state by statute, not a valid exercise of police power, attempts to do so, its statute invades the Federal field of bankruptcy, and is in conflict with the Federal Constitutional power.

[fol. 25] In Gilbett's Collier on Bankruptcy, (4th Ed.) at Page 2 it is said:—

"The bankruptcy act having been adopted by Congress under the Constitutional delegation of power is the supreme law of the land and its provisions are paramount to any state statute."

Numerous authorities might be cited:—The following suffices.

Local Loan Company vs. Hunt, 292 U. S. 234, 244, 245.

That the discharge of bankrupts from dischargeable debts is a matter of public interest was declared in Hanover National Bank vs. Moyses, 186 U. S. 181, where the Court said at Page 192:

"The determination of the status of the honest and unfortunate debtor by his liberation from encumbrance on future exertion is a matter of public concern and Congress has power to accomplish it throughout the U. S. by proceedings at the debtor's domicil."

To the same effect are: Williams vs. U. S. Fidelity & Guaranty Company, 236 U. S. 549, 555-555.

Local Loan Company vs. Hunt, 292 U. S. 234, 244 Supra.

Courts are not to be influenced by the hardship which some innocent person may suffer because judgments recovered against negligent operators of automobiles are dischargeable in bankruptcy and there, therefore, uncollectible.

The remedy lies with Congress which can make such judgments non dischargeable, not with the Courts or the State Legislature.

It is said in the majority opinion that the provisions placed in Section 94-b in 1936 empowering the judgment creditor to require the Commissioner to give permission for the debtor to operate his automobile for six months and thereafter until the creditor withdraws the permission, and the 1939 insertion which together with the 1936 provision gives the creditors sole power to start or not start the suspension proceedings, may be entirely stricken out of the statute by decision of this Court and still leave the remainder of the section valid and constitutional.

The majority opinion does not say that these 1936 and 1939 provisions are unconstitutional but holds such decision [fol. 26] not necessary because they may be stricken out and leave a valid and constitutional remainder of the section.

The writer cannot concur in this view.

It is, of course, well recognized, that if some part or parts of a statutory scheme or regulation is or are unconstitutional and readily separable and the general scheme and regulation as intended by the Legislature remains unimpaired, such part or parts may be stricken out and the remainder of the statute held valid.

Such is the effect of the authorities cited in the majority opinion.

Reference to one will illustrate this.

People Ex Rel Alpha P. Company vs. Knapp, 230 N. Y. 48 was concerned with a revenue act.

The Court there found a condemned part easily separable and said at Page 62:—

"Thus viewing it, I cannot doubt that the exclusion of interest on intangibles will leave the *essence of the scheme intact.*"

The other cases are generally of like nature.

The teaching of these cases is that only where the general scheme and intent of the statute is not impaired, separable parts not constitutional may be stricken out and the remaining held valid.

These cases are not controlling here because here we do not have any such statute as those there involved and because here, after the elimination of the condemned parts, the essence of the statutory scheme does not remain intact.

In statutory construction it is the duty of the Courts to find and give effect to the legislative intent.

Matter of Hering, 196 N. Y. 218, 221.

Osborne vs. Int. Ry. 226 N. Y. 421, 425.

People Ex. Rel. Babcock vs. Law, 209 App. Div. 526.

Courts will assume that legislatures in passing an amendment to a statute intended to effect such material change as is indicated by the amendment, otherwise the legislation would be nugatory.

[fol. 27] People Ex. Rel. Sheldon vs. Board of Appeals, 234 N. Y. 484.

This section 94-b is not a complicated taxing act as in some of the cases referred to in the majority opinion, nor a complex regulatory act as in Buffalo Gravel Company vs. Moore, 201 App. Div. 242. This act is an integral and indivisible unity. It is but one thing. It has but one object, viz, a statutory scheme by which the negligence judgment creditor may collect his judgment, which scheme places all power of starting, stopping, and restarting the statutory machine under exclusive control of the creditor and provides that the Court Clerk and Commissioner can act only as he commands, all of which is but a statutory scheme by which the negligence creditor may collect a debt dischargeable in bankruptcy.

That the legislature meant it so "also admits of no doubt for in 1936 and 1939 it made the changes (including re-enactment in 1939) deliberately and intentionally changing to

such an act as above outlined, from an act providing for mandatory automatic suspension of a defaulting judgment debtors license forever (later changed to three years) over which suspension the judgment creditor had not one iota of power or control.

When the part of the statute found unconstitutional is so connected with the general scope and purpose of the legislation that its imperfections destroy the latter, it cannot be eliminated and the statute as a whole must fall.

People vs. Klinck Packing Company, 214 N. Y. 121, 140 Supra.

Where the invalid is so commingled with the valid, is so large and essential a part of the general scheme that Revision is impossible; the statute as a whole is invalid.

Meyer vs. Wells Fargo Express Company, 223 U. S. 298, cited with approval in People Ex. Rel. Alpha P. Company vs. Kanpp, 230 N. Y. 48, 60 Supra; Ives vs. South Buffalo Railway Company, 201 N. Y. 271, 317.

An interesting discussion of the difficulties of attempting to separate condemned parts in a statute devoted to a limited [fol. 28] object is contained in the dissenting opinion of Judges Kellogg & O'Brien in People vs. Mancuso, 255 N. Y. 463, 487, where the dissenting Judges held:—

"Nevertheless, the two parts, valid and invalid, must be 'capable of separation,' (Supervisors vs. Stanley, Supra, Page 312), the valid part will be retained only "provided the allowed and prohibited parts are severable." (Packet Company vs. Keokuk, 95 U. S. 80, 89); it will be retained only if the unconstitutional part is clearly "separable." (Berea College vs. Kentucky supra; Huntington vs. Worthen supra). In all the cases cited, and in many more, where a constitutional provision has been "separated" and saved, although contained in the same clause with an unconstitutional provision, the statutes considered have been of wide application, comprehending as the subjects of a tax, a prohibition, or a regulation, non-taxable properties or matter incapable of prohibition, or regulation by the enacting statute as well as properties or matters properly the subject of its enacting powers. The provisions allowed to remain have by their terms covered permissible subjects; subjects forbidden by reason of the constitution,—have merely been released from the statutory coverage."

If the condemned parts are stricken out of Section 94-b, it does not leave the "essence of the scheme intact," as in People ex. rel. Alpha P. Company vs. Knapp, 230 N. Y. 48 Supra. On the contrary it completely destroys the intended statutory scheme.

What is left of the Section is not the statutory scheme now embodied in the statute, but it is the scheme of the statute as it was before 1936. This scheme the majority of the Court approve and hold may be saved and made effective as a laudable statute.

But if this is done, gone are all such rules of construction as that it is the duty of the Courts to find and give effect to the legislative intent, which is here so manifest; that when the legislature amends a statute it intends to make such material change as is indicated by the statute, that a statute will not survive the excission of unconstitutional parts if it is apparent that the legislature would not have enacted it with the invalid parts out of it; that courts can only separate and strike out parts of a statute as unconstitutional and hold the remainder of the statute valid if that remainder embodies and preserves the essence of the general scheme and purpose of the statute.

[fol. 29] How then can it reasonably be said here that the condemned parts are separable and that what remains embodies the "essence of the scheme intact?"

In short, the statute is one thing as it stands. To strike out the condemned parts is to change the statute to something quite different.

For the Court to strike out the condemned parts and thereby change the statute into something not intended or contemplated by the legislature in 1936 and 1939 borders on judicial legislation. It is an invasion by the judicial power of the governmeatal field reserved for the legislature power.

It is in effect saying to the State Legislature that it cannot have the statute that it deliberately created by amendment in 1936 and by re-enactment in 1939 with further change, but it can have and must have a statute which the Court approves as a salutary statute but which the legislature deliberately discarded and abandoned in 1936 and 1939.

It matters not that when the legislature next meets it has power to repeal the court-approved statute and enact such statute as it pleases. It is no less an invasion during the interim.

This is not a state Court passing in a state statute challenged as violating the state constitution.

This is a Federal Court invoked to determine whether or not a state statute violates the Federal constitution.

The writer cannot concur in the majority opinion and holds that the statute is a unity and inseparable, is unconstitutional and void and its enforcement should be restrained.

August 13, 1940.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

GEORGE C. REITZ, Plaintiff,

against

CARROLL E. MEALEY, as Commissioner of Motor Vehicles of the State of New York, Defendant

JUDGMENT—Filed October 26, 1940

This case came on to be heard on the 3rd day of July, 1940 before Honorable Frank Cooper, District Judge, and Honorable Learned Hand, Circuit Judge, and Honorable Alfred C. Coxe, District Judge, whom he called to his assistance pursuant to Section 380 of the United States Code of Laws, and the pleadings having raised no issue on any of the material facts alleged in the complaint herein, and the sole issue involved being the constitutionality of Section 94-b of the Vehicle and Traffic Law of the State of New York, it was stipulated by counsel that the hearing be treated as the final hearing in this suit on the prayer for a permanent injunction and that a final decree might be issued granting or denying a permanent injunction herein, and, thereupon, upon consideration thereof it was

Ordered, Adjudged and Decreed, that the bill of complaint of the plaintiff be and the same hereby is dismissed upon the merits.

Dated: October 7th, 1940.

Learned Hand, Circuit Judge; Frank Cooper, District Judge; Alfred C. Coxe, District Judge.

[File endorsement omitted.]

[fol. 31] In Supreme Court of the United States

[Title omitted]

Petition for Appeal—Filed December 5, 1940

To Hon. Frank Cooper, United States District Court Judge for the Northern District of New York:

Your petitioner, George C. Reitz, respectfully shows:

First. That your petitioner is the appellant in the above entitled proceeding and is a resident of the County of Albany and State of New York, which is located in the Northern District of New York.

Second. That this action was commenced on July 14, 1940, by service of the summons and complaint herein upon the Attorney General, with due notice to all other parties necessary to the proceeding.

Third. That on June 21, 1940, the appellant herein was duly adjudicated a bankrupt and the question of his discharge has not yet been determined, said question being held pending the determination of this action.

Fourth. That scheduled among the debts of the appellant herein in the bankruptcy proceeding, under Schedule A 3, is a judgment recovered against the appellant herein in the Supreme Court, Albany County, in favor of one Anson Shafer, in the sum of Five Thousand One Hundred Thirty Eight Dollars and Twenty-Five Cents ($5138.25), arising out of a negligence action to recover damages for personal injuries due to the operation of an automobile by the appellant herein.

Fifth. That said judgment was duly docketed in the Albany County Clerk's Office on December 15, 1939, and notice [fol. 32] of entry thereof was served upon the attorney for the appellant herein and said judgment still remains unsatisfied.

Sixth. That the claim of the judgment creditor, Anson Shafer, and the judgment obtained pursuant to said claim are dischargeable in bankruptcy.

Seventh. That prior to May 29, 1940, pursuant to demand by John J. Scully, attorney for said judgment creditor un-

der the provisions of Sec. 94b, of the Vehicle & Traffic Law of the State of New York, the Clerk of the Supreme Court, Albany County, forwarded a transcript of said judgment to the Commissioner of Motor Vehicles of the State of New York, Carroll E. Mealey, the appellee herein, with evidence to the effect that said judgment had remained unsatisfied for more than fifteen (15) days after the same had become final, all in due compliance with Sec. 94b. of the Vehicle & Traffic Law of the State of New York; that by authority of Sec. 94b. of the Vehicle & Traffic Law of the State of New York the appellee issued an order suspending appellant's chauffeur's license until the judgment hereinbefore mentioned is satisfied.

Eighth. That said Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional and void as it is in violation of the Constitution of the United States and invades the field of bankruptcy, which, by the United States Constitution, is a power exclusively delegated to the Federal Government, in that said section, solely at the instigation of the judgment creditor and not otherwise, mandatorily requires the Commissioner of Motor Vehicles of the State of New York to suspend appellant's chauffeur's license for a term of three (3) years but places within the exclusive control of said judgment creditor the right to consent to the restoration of said license immediately and from time to [fol. 33] time, and that said section in effect is a means given to the judgment creditor to collect a judgment dischargeable in bankruptcy and removes said judgment from the class of dischargeable debts, in violation of the Fourteenth Amendment to the Constitution of the United States.

Ninth. That irreparable damage will be done to the appellant herein if such order of suspension is allowed to remain in full force and effect.

Tenth. That the appellant herein has not yet surrendered his chauffeur license to the Commissioner of Motor Vehicles pursuant to said order of suspension due to the fact that all proceedings on the part of the Commissioner of Motor Vehicles to enforce the suspension of appellant's chauffeur's license have been enjoined pending the disposition of this action.

Eleventh. That by judgment of a Statutory District Court of Three Judges, to wit., Hon. Learned Hand, Circuit Judge,

Hon. Frank Cooper, District Judge, and Hon. Alfred C. Coxe, District Judge, dated October 7, 1940, and entered in the office of the Clerk of the United States District Court for the Northern District of New York on October 26, 1940, a copy of which was served upon the attorney for the appellant herein on November 2, 1940, the bill of complaint of the appellant herein was dismissed upon the merits.

Twelfth. That the appellant herein is desirous of appealing to the Supreme Court of the United States, pursuant to the provisions of Sec. 266 of the Judicial Code as amended (U. S. Code, Title 28, Sec. 380), which permits a direct appeal from the Statutory District Court of Three Judges to the Supreme Court of the United States in any case where the constitutionality of a state statute is presented.

Thirteenth. That it is claimed by the appellant herein that Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional and void in so far as the pro- [fol. 34] visions of said section operate upon the rights of the appellant herein, a bankrupt.

Fourteenth. That the appellant herein respectfully requests a stay of all proceedings herein, pursuant to the provisions of Sec. 266 of the Judicial Code supra, pending this appeal, upon the ground that irreparable damage will be done to the appellant herein if the appellee is permitted to enforce the provisions of Sec. 94b. of the Vehicle & Traffic Law against the appellant herein before the determination of this appeal by the Supreme Court of the United States.

Fifteenth. That the Attorney General of the State of New York has consented to dispense with the bond to secure the appellee for costs of this appeal.

Sixteenth. That in accordance with the provisions of Secs. 238 and 266 of the Judicial Code, and in accordance with the Rules of the Supreme Court of the United States, the appellant herein respectfully shows the Court that this case is one in which, under the laws in force when the acts of February 13, 1925, were passed, to wit., Secs. 238 and 266 of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

Seventeenth. That the errors upon which the appellant herein claims to be entitled to an appeal are more fully set forth in the assignment of errors filed herein pursuant to

Rules 9 and 46 of the Rules of the Supreme Court of the United States, and there is likewise filed herewith a statement as to the jurisdiction of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

[fol. 35] Wherefore, your petitioner prays for the allowance of the appeal from the judgment of the said Statutory District Court of Three Judges to the Supreme Court of the United States in order that the decision and final judgment of said Court may be examined, reviewed and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the United States District Court for the Northern District of New York, under the hand and seal of said Court, may be sent to the Supreme Court of the United States, as provided by law; that a stay may be granted restraining the Comsioner of Motor Vehicles of the State of New York from any and all further acts in any way tending to affect the chauffer's license of the appellant herein; and that security for costs to the appellee herein be dispensed with; and that the appellant herein have such other and further relief as to this Court may seem just and proper in the premises.

George C. Reitz, Petitioner.

Duly sworn to by George C. Reitz. Jurat omitted in printing.

[fol. 36] In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal and Waiving Cost Bond—Dec. 3, 1940

The petition of George C. Reitz, the appellant in the above entitled cause, for an appeal to the Supreme Court of the United States from the final judgment entered in the office of the Clerk of the United States District Court for the Northern District of New York on October 26, 1940, and duly served upon the appellant herein by service upon his attorney, Harry A. Allan, on November 2, 1940, having been presented herein accompanied by an assignment of errors,

and a statement as to jurisdiction, as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record and all previous proceedings in this case having been considered, it is hereby

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the final judgment entered in the office of the Clerk of the United States District Court for the Northern District of New York, which judgment was granted by a Statutory District Court of Three Judges, to wit., Hon. Learned Hand, Circuit Judge, Hon. Frank Cooper, District Judge, and Hon. Alfred C. Coxe, District Judge, on October 7, 1940, as prayed in the petition of the appellant, and that the Clerk of this Court shall make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, in accordance [fol. 37] with Rule 10 of the Rules of the Supreme Court of the United States; and it is further

Ordered upon stipulation that security for costs of the appeal herein be, and the same hereby is dispensed with.

Dated: December 3rd, 1940.

Frank Cooper, Judge of the U. S. District Court, Northern District of New York.

[fol. 38] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed Dec. 5, 1940

The petitioner assigns the following errors in the record and proceedings in this cause:

1. The Federal Statutory District Court of Three Judges erred in refusing to sustain appellant's contention that Sec. 94b. of the Vehicle & Traffic Law of the State of New York violates

(1) The due process clause of the Constitution of the United States.

(2) The bankruptcy clause of the Constitution of the United States (Art. 1, Sec. 8, Clause 4); and

(3) Denies to the appellant the equal protection of the laws both of the United States and of the State of New York, and Sec. 17 of the Bankruptcy Act.

Wherefore, on account of the errors hereinbefore assigned, petitioner prays that said judgment, order and decree of the Federal Statutory District Court of Three Judges, to wit., Hon. Learned Hand, Circuit Judge, Hon. Frank Cooper, District Judge, and Hon. Alfred C. Coxe, District Judge, entered in the office of the Clerk of the United States District Court for the Northern District of New York, be reversed, and judgment entered in favor of the appellant.

Dated: November 27, 1940.

George C. Reitz, Petitioner. Harry A. Allan, Attorney for Appellant.

[fol. 39] Citation in usual form filed Dec. 5, 1940, omitted in printing.

[fol. 40] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 41] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY—Filed January 27, 1941

Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional upon the grounds that said statute

1. Conflicts with the bankruptcy clause of the United States Constitution (Art. 1, Sec. 8, Clause 4) and Sec. 17 of the Bankruptcy Act.

2. Violates the due process clause of the United States Constitution (14th Amendment).

3. Denies to appellant the equal protection of the Laws of the United States, in violation of the 14th Amendment to the United States Constitution.

The federal statute which appellant claims he is protected by and which is violated by Sec. 94b. of the Vehicle & Traffic Law of the State of New York is the Bankruptcy Act, Sec. 17, in that appellant is deprived by Sec. 94b. of the Vehicle & Traffic Law of the State of New York of the full benefit of a discharge in bankruptcy, to which he is entitled under the Constitution of the United States and the Bankruptcy Act.

Harry A. Allan, Attorney for Appellant, Office & Post Office Address, 90 State Street, Albany, N. Y.

[fol. 42] [File endorsement omitted.]

Endorsed on cover: File No. 45,035. N. New York, D. C. U. S. Term No. 686, George C. Reitz, Appellant, vs. Carroll E. Mealey, as Commissioner of Motor Vehicles of the State of New York. Filed January 8, 1941. Term No. 686 O. T. 1940.